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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,752	06/18/2007	Murray Edward Bruce Leighton	769-401	3395

51468 7590 06/06/2011
DAY PITNEY LLP
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NEW YORK, NY 10036-7311

EXAMINER

BYRD, LATRICE CHENELL

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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06/06/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/593,752

Applicant(s)LEIGHTON, MURRAY EDWARD
BRUCE**Examiner**

LATRICE BYRD

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/5/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 21-51 in the reply filed on 2/8/11 is acknowledged. Claims 1-20 and 52-79 have been canceled by applicant.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a plurality of spout portions as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are

not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification nor the drawings show a plurality of spout portions. It is not clear if the claim is directed towards a plurality of spout portions along a length of bag material used to form a multiple of bags or a plurality of spouts on one bag.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 21, 28 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenichi, T. et al. (WO 03080458).
7. In re claim 21, Kenichi, T. et al. discloses a reclosable fastener comprising first and second strips (212) of fastener material which are engageable with and disengageable from each other, each strip comprising an elongate body portion which is shaped for releasable engagement with the body portion of the other strip and first (214) and second longitudinal flanges (211), the first flanges extending away from a plane of separation of the strips and the second flanges extending in the same direction substantially parallel to the plane of separation.
8. In re claim 28, Kenichi, T. et al. discloses a reclosable fastener in which each fastener strips has a third longitudinal flange (213) which extends in a plane substantially parallel to the plane of separation in a direction opposite to that in which the respective second flange extends.
9. In re claim 31, Kenichi, T. et al. discloses a reclosable fastener in which the second and third flanges of each strip are substantially coplanar with each other.
10. In re claim 32, Kenichi, T. et al. discloses a reclosable fastener in which the first flanges extend in planes substantially perpendicular to the plane of separation.
11. In re claim 33, Kenichi, T. et al. discloses a reclosable fastener comprising first and second strips (212) of fastener material which are engageable with and disengageable from each other, each strip comprising an elongate body portion which is shaped for releasable engagement with the body portion of the other strip, each strip having at least first, second and third longitudinal flanges (214,211,213 respectively).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenichi, T. et al. (WO 03080458). in view Tilman (USPN 5,209,574).

14. In re claims 22-23, Kenichi, T. et al. discloses the claimed invention except the first flanges being narrower than the second flanges. However, Tilman teaches forming gripping flanges (36,38) narrower than flanges (20,22). It would have been obvious to one of ordinary skill in the art to have formed the first flanges of Kenichi, T. et al. narrower than the second flanges as taught by Tilman in order to accommodate any offset that may occur between the fingers of a user when opening the closure of the bag.

15. Claims 24-26, 29-30 and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenichi, T. et al. (WO 03080458).

16. In re claims 24-26, 29-30 and 34-38, Kenichi, T. et al. discloses the claimed invention except the widths of the first, second and third flanges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to the width of the flanges within the claimed ranges, since it has been held that where the

general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

17. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenichi, T. et al. (WO 03080458) in view Ausnit (USPN 3,959,856).

18. In re claim 27, Kenichi, T. et al. discloses the claimed invention except a slider. However, Ausnit teaches a reclosable fastener (5) having a flange (23) with a slider (27). It would have been obvious to one of ordinary skill in the art to have fitted a slider on the fastener of Kenichi, T. et al. as taught by Ausnit in order to assist in closing the fastener permitting a water-tight closure the full length of the zipper.

19. Claims 39-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenichi, T. et al. (WO 03080458) in view Machacek et al. (PGPub 2003/0231808).

20. In re claims 39-46, Kenichi, T. et al. discloses the claimed invention except a spout joined to the second flanges that is removed. However, Machacek et al. teaches a spout (40) joined to a flange (28,30) of a reclosable fastener that is removed outside of the bag. It would have been obvious to one of ordinary skill to have included a spout in the reclosable fastener of Kenichi, T. et al. as taught by Machacek et al. in order to help direct product outside of the bag interior by removing the spout.

21. Claims 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenichi, T. et al. (WO 03080458) in view Schneider et al. (USPN 6,609,828 B2).

22. In re claims 47-51, Kenichi, T. et al. discloses the claimed invention except a rolled web of sheet material having a plurality of spaced openings. However, Schneider et al. teaches a rolled web of sheet material (30) having a plurality of spaced openings

(20). It would have been obvious to one of ordinary skill in the art to have the fastener of Kenichi, T. et al. secured to a web of sheet material having a plurality of spaced openings as taught by Schneider et al. in order to form a container with an access opening that can be opened and resealed when accessing the contents of the container.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATRICE BYRD whose telephone number is (571)270-5703. The examiner can normally be reached on Mon-Thu 9:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATRICE BYRD/
Examiner, Art Unit 3782

/NATHAN J NEWHOUSE/
Supervisory Patent Examiner, Art Unit 3782